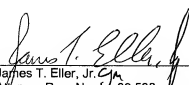


TRANSMITTAL OF APPEAL BRIEF		Docket No. 0465-1165PUS1	
In re Application of: Nam Seon CHO			
Application No. 10/824,350-Conf. #6334	Filing Date April 15, 2004	Examiner M. W. Ing	Group Art Unit 3637
Invention: DOOR ASSEMBLY OF REFRIGERATOR			
<p><u>TO THE COMMISSIONER OF PATENTS:</u></p> <p>Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: <u>January 26, 2009</u> .</p> <p>The fee for filing this Appeal Brief is <u>\$ 540.00</u> .</p> <p><input checked="" type="checkbox"/> Large Entity <input type="checkbox"/> Small Entity</p> <p><input type="checkbox"/> A petition for extension of time is also enclosed.</p> <p>The fee for the extension of time is _____ .</p> <p><input type="checkbox"/> A check in the amount of _____ is enclosed.</p> <p><input checked="" type="checkbox"/> Charge the amount of the fee to Deposit Account No. <u>02-2448</u> .</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. <u>02-2448</u> .</p> <p style="padding-left: 40px;">This sheet is submitted in duplicate.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 60%;">  <div style="border-top: 1px solid black; padding-top: 5px;"> James T. Eller, Jr. <i>gm</i> Attorney Reg. No. 39,538 BIRCH, STEWART, KOLASCH & BIRCH, LLP 8110 Gatehouse Road Suite 100 East P.O. Box 747 Falls Church, Virginia 22040-0747 (703) 205-8000 </div> </div> <div style="width: 35%; text-align: right;"> Dated: <u>March 26, 2009</u> </div> </div>			

IN THE U.S. PATENT AND TRADEMARK OFFICE

Appellant:	Nam Seon Cho	Conf. No.:	6334
Appl. No.:	10/824,350	Group:	3637
Filed:	November 25, 2003	Examiner:	M. ING
For:	DOOR ASSEMBLY OF REFRIGERATOR		

BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

MS Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Sir:

As required under § 41.37(a), this Brief is filed within two months after the Notice of Appeal filed in this case on January 26, 2009 and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b) (2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims
- IX. Evidence
- X. Related Proceedings
- Appendix A. Claims
- Appendix B: Evidence
- Appendix C: Related Proceedings

I. Real Party in Interest

The real party in interest for this Application is LG Electronics Inc., as evidenced by an Assignment recorded on April 26, 2004 at Reel 015225, Frame 0262.

II. Related Appeals and Interferences

To the best of Appellant's knowledge, there are no other prior or pending appeals of this Application, or patent interference proceedings, or judicial proceedings which may be related to, directly affect, or be directly affected by, or have a bearing on the Board's decision of this Appeal.

III. Status of Claims

In the Application on appeal, claims 1, 3, 4, 6-12, 15 and 16 are the only pending claims. Claims 1 and 16 are independent. Claims 2, 5, 13, 14 and 17-19 were previously canceled. Claims 1, 3, 4, 6-12, 15 and 16 stand rejected and are appealed.

IV. Status of Amendments

No amendments after the Final Rejection dated October 27, 2008 have been filed.

V. Summary of the Claimed Subject Matter

Claim 1 recites a refrigerator door assembly having a sliding door (3) configured to be slid open and closed and a handle (30) provided on a top edge surface (20) of the door. A plurality of handle holders (10) each have an end fixed to the door and another end attached to the handle (30). The end fixed to the door includes a handle holder member extended to the handle and a supporting member (40) protruded in a first direction on a lower surface of the handle holder member and receivable within a groove (21) provided in the door and best seen in Figure 6, preventing damage from occurring to the handle holder. The supporting member (40) is disposed between the handle and a securing mechanism (13, 14) configured to secure a corresponding handle holder to the side of the door so as to absorb a force applied to the handle in a second direction opposite to the first direction, as explained in paragraph [0060], and

reinforce a strength of the handle holder (10) when the sliding door is slid open and closed. The supporting member (40) is integrally formed with the handle holder (10) such that the supporting member and the handle holder are a single unitary piece, as can be seen in the cross sectional view of Figure 4.

Likewise, claim 16 recites a handle assembly having a handle (30) and a plurality of handle holders (10) each having an end fixed to a door and another end attached to the handle (30). The end fixed to the door comprises a handle holder member extended to the handle and a supporting member (40) protruded in a first direction at a lower surface of each handle holder member and receivable within a groove (21) provided in the door. The supporting member (40) is disposed between the handle (30) and a securing mechanism (13, 14) configured to secure a corresponding handle holder to the side of the door so as to absorb a force applied to the handle in a second direction opposite to the first direction, as explained in paragraph [0060] and reinforce a strength of the handle holder when the door is slid open and closed. The supporting member (40) is integrally formed with the handle holder (10) such that the supporting member and the handle holder are a single unitary piece, as is seen in the cross sectional view of Figure 4.

VI. Grounds of Rejection to be Reviewed on Appeal

Rejection based on Prior Art disclosed by Appellant in Figures 1-3 (APAA) in view of US 5,542,795 (Mitchell)

The Examiner rejected claims 1, 3, 4, 6-12, 15 and 16 as being obvious over APAA in view of Mitchell. The Examiner stated that APAA disclosed the invention, as claimed, except for the use of a supporting member. The Examiner states that Mitchell discloses a supporting member (50) and concludes it would have been obvious to add a supporting member to the handle disclosed in the APAA in order to provide a stronger and more secure connection between the handle holders and the door and to provide an aid to position the handle holders upon the door during manufacturing.

VII. Argument

Rejection of claims 1, 3, 4, 6-12, 15 and 16 based on Prior Art disclosed by Appellant in Figures 1-3 (APAA) in view of US 5,542,795 (Mitchell)

Because the rejection is based on 35 U.S.C. § 103, what is in issue in such a rejection is "the invention as a whole," not just a few features of the claimed invention. Under 35 U.S.C. § 103, "[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." The determination under Section 103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. See *In re O'Farrell*, 853 F.2d 894, 902, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988). In determining obviousness, the invention must be considered as a whole and the claims must be considered in their entirety. See *Medtronic, Inc. v. Cardiac Pacemakers, Inc.*, 721 F.2d 1563, 1567, 220 USPQ 97, 101 (Fed. Cir. 1983).

In rejecting claims under 35 U.S.C. § 103, it is incumbent on the Examiner to establish a factual basis to support the legal conclusion of obviousness. See *In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one of ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroyal Inc. v. F-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444

(Fed. Cir. 1992). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be suggested or taught by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

A suggestion, teaching, or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *See In re Dembiczak*, 175 F.3d 994 at 1000, 50 USPQ2d 1614 at 1617 (Fed. Cir. 1999).

Moreover, it is well settled that the Office must provide objective evidence of the basis used in a prior art rejection. A factual inquiry whether to modify a reference must be based on objective evidence of record, not merely conclusory statements of the Examiner. *See In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

Furthermore, during patent examination, the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent. Only when a *prima facie* case is made, the burden shifts to the Applicant to come forward to rebut such a case.

The prior art of Figures 1-3 demonstrates the problem of handle failure due to a lifting force exerted on the handle during opening and closing. This force causes the handle to break at a point of weakness, the screw holes. To solve this problem, Appellant uses the supporting member on the bottom surface of the handle to increase the strength of the handle at a portion most likely to fail. The Examiner alleges that this feature is obvious based on the disclosure of Mitchell.

Mitchell discloses a cutting insert 36 for a mill. The insert attaches to an insert seat 26 by a screw 53. As disclosed in col. 5, lines 47-61, cutting inserts will cut on their radially outward edges during 180 degrees of travel. Cutting forces acting on the inserts 36 push them in a radial direction and there is a tendency for the inserts to rotate about the axis of the locking screw. To secure the insert against these forces, Mitchell provides means for improved lateral and rotational support by an integrally formed rail 50 received in a slot 32 of the seat 26, most clearly seen in Figure 5. As disclosed at col. 2, line 49-54, the rail-like projection element 50 prevents transverse relative movement between the insert 36 and cutter body. Column 1, line 66 – col. 2, line 1 notes the need to secure the inserts against axial, radial or tangential movement during the cutting operation.

In the invention, upward forces acting on the handle create stress at the screw holes and the supporting member acts to accommodate these stresses. Relative movement between the handle holder (10) and door is not common. The inserts 36 of Mitchell encounter entirely different forces as the cutter is first axially fed into the workpiece and then moved in a direction perpendicular to the axis of rotation (see col. 5, lines 41-46). The structure of the inserts 36 counteract these forces and provides no teaching for counteracting forces such as those exerted on the handle of a sliding door of a refrigerator. Therefore, one of ordinary skill in the art would not look to the inserts of Mitchell for structure that can be used to modify the structure disclosed in the APAA.

Clearly, Mitchell's disclosure fails to disclose or suggest anything to do with (1) sliding drawer doors; (2) sliding drawer door handle holders; (3) sliding drawer doors with horizontal door handles connected to a top surface of the sliding drawer by separate handle holders having one end fixed to the top of the drawer and a free end holding the drawer handle; or (4) strengthening drawer handle holders subjected to a force placed thereon by a person who opens the door by pulling upward on the handle, and is not directed to solving any problem that is shown to exist in the APAA.

Another way of stating this is that Mitchell is non-analogous to the APAA. The test for non-analogous art is first whether the art is in the same field of the inventor's endeavor and, if not, whether it is "reasonably pertinent to the problem with which the inventor was involved." *In*

re Wood, 599 F.2d 1032, 1036 (CCPA 1979). “A reference is reasonably pertinent if, even though it may be in a different field” of endeavor, it logically would have commended itself to an inventor’s attention in considering his problem “because of the matter with which it deals.” *In re Clay*, 996, RF.2d 656, 659 (Fed. Cir. 1992).

Appellant respectfully submits that Mitchell is clearly not in the same field of endeavor as the AAPA because the AAPA door handle is not a cutter or a cutter insert and is not routinely subject to cutting deep pockets in a workpiece in both the vertical and horizontal directions, and does not have a cutter and cutter inserts where the inserts need to be secured against axial, radial or tangential movement during opening or closing of a door, as is Mitchell.

Furthermore, the AAPA and Mitchell are not directed to addressing or solving the same problem, and as a result, one of ordinary skill in the art would have no incentive to turn to Mitchell to modify the AAPA door handle, as suggested.

Additionally, the Office Action fails to show that the unwanted relative movement between Mitchell’s cutter and any of Mitchell’s cutter inserts has anything whatsoever to do with breakage of door handles of the AAPA. In this regard, Mitchell does not mention breakage of any of its components. Instead, Mitchell focuses on solving relative movement problems between a cutter and a cutter insert and is completely devoid of any disclosure of breakage of the cutter or of the cutter inserts.

Thus, one of ordinary skill in the art would not have any incentive whatsoever to turn to Mitchell to solve the door handle holder breakage problem of the AAPA.

For at least these reasons, one of ordinary skill in the art would have no proper incentive to look to Mitchell to modify Fig. 3 of Appellant, i.e., the AAPA.

Appellant respectfully submits that the proposed combination of references is done in a manner that attempts to reconstruct the Appellant’s invention only with the benefit of hindsight, using Appellant’s disclosure against Appellant, which is fundamentally improper and is clearly insufficient to present a *prima facie* case of obviousness.

Accordingly, it is respectfully submitted that the Office Action fails to make out a *prima facie* case of obviousness of the invention recited in independent claims 1 and 16 and each of the claims depending therefrom.

It is respectfully requested that the Examiner's rejection be overturned and the claims allowed.

VIII. Claims

A copy of the claims involved in the present appeal is attached hereto as Appendix A. As indicated above, the claims in Appendix A do include the amendments filed by Appellant on March 14, 2007.

IX. Evidence

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the Examiner is being submitted.

X. Related Proceedings

No related proceedings are referenced in Section II, above.

Conclusion

Appellant respectfully submits that claims 1, 3-4, 6-12, 15 and 16 are patentable over the applied art and that all of the rejections of record should be reversed.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Dated: **March 26, 2009**

Respectfully submitted,

By  _____

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APPENDIX A: CLAIMS

1. A refrigerator door assembly, comprising:
 - a sliding door configured to be slid open and closed;
 - a handle provided on a top edge surface of the door; and
 - a plurality of handle holders each having an end fixed to the door and another end attached to the handle, wherein the end fixed to the door comprises:
 - a handle holder member extended to the handle; and
 - a supporting member protruded in a first direction on a lower surface of the handle holder member and receivable within a groove provided in the door, preventing damage from occurring on the handle holder,
 - wherein the supporting member is disposed between the handle and a securing mechanism configured to secure a corresponding handle holder to the side of the door so as to absorb a force applied to the handle in a second direction opposite to the first direction and reinforce a strength of the handle holder when the sliding door is slid open and closed, and
 - wherein the supporting member is integrally formed with the handle holder such that the supporting member and the handle holder are a single unitary piece.
3. The door assembly according to claim 1, wherein the supporting member is located on a contacting surface between the handle holder and the door.
4. The door assembly according to claim 1, wherein a width of the supporting member is smaller than that of the handle holder.
6. The door assembly according to claim 1, wherein a groove for inserting the supporting member is formed on the door.

7. The door assembly according to claim 6, wherein a depth of the groove is the same as a thickness of the supporting member.

8. The door assembly according to claim 1, wherein the handle holder is fixed to the door by the securing mechanism penetrating the handle holder.

9. The door assembly according to claim 8, wherein the securing mechanism is a screw.

10. The door assembly according to claim 1, wherein the securing mechanism comprises at least two screws provided to fix the handle holder to the door.

11. The door assembly according to claim 10, wherein the supporting member is located at a surrounding region of holes through which the screws are penetrated.

12. The door assembly according to claim 11, wherein the supporting member is located on a lower surface of a surrounding region of a hole through which a screw closer to the handle is penetrated.

15. The door assembly according to claim 1, wherein the handle holder is located on each side of the handle.

16. A handle assembly for a refrigerator door, comprising:
a handle; and
a plurality of handle holders each having an end fixed to a door and another end attached to the handle, wherein the end fixed to the door comprises:
a handle holder member extended to the handle; and
a supporting member protruded in a first direction at a lower surface of each handle holder member and receivable within a groove provided in the door,

wherein the supporting member is disposed between the handle and a securing mechanism configured to secure a corresponding handle holder to the side of the door so as to absorb a force applied to the handle in a second direction opposite to the first direction and reinforce a strength of the handle holder when the door is slid open and closed, and

wherein the supporting member is integrally formed with the handle holder such that the supporting member and the handle holder are a single unitary piece.

APPENDIX B: EVIDENCE

(None)

APPENDIX C: RELATED PROCEEDINGS

(None)